IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Dhanna Singh Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.938/2006)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 17-9-2003 in Sessions Case No.59/2003 passed by Sh. Iduddin, RHJS, Additional Sessions Judge (Fast Track) No.1, Bharatpur Camp Deeg.

Date of Judgment: August 13, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Ms. Rajesh Kandwal, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Dhanna Singh, the appellant herein, was put to trial before learned Additional Sessions Judge (Fast Track) No.1 Bharatpur Camp Deeg, who vide judgment dated September 17, 2003 convicted and sentenced him as under:-

U/s.302 IPC:
To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.201 IPC:
To suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on July 10, 1990 informant Maya Kaur (Pw.1) submitted a written report (Ex.P-1) at Police Station Sikri to the effect that around 3.30 PM when she along with her brother Balbir Singh was going to village Barbada, they found just ahead of village Lavan, Amar Singh, Dhanna Singh (appellant herein) and Pyar Singh, who obstructed their way. Dhanna Singh was armed with Pharsi whereas others were having lathis. They had a scuffle with Balbir Singh and they instigated each other to kill him and inflicted injuries on the person of Balbir Singh as a result of which he died on the spot. His dead body was dragged by them to another field. The incident had been witnessed by Arjun Singh son of Rana Singh and Arjun Singh son of Jawahar Singh. On that report a case under sections 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed against the appellant and co-accused Amar Singh. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1, Bharatpur Camp Deeg. Charges under sections 302, 302/34 and 201 IPC were framed against the appellant, who denied the charges and claimed trial. During the course of trial the appellant absconded and trial proceeded only against co-accused Amar Singh, who ultimately stood acquitted. After the arrest of the appellant trial proceeded against him. The prosecution in support of its case examined as may as 10 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in support of defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Death of Bablbir Singh was homicidal in nature. As per post mortem report (Ex.P-6) he received following ante mortem injuries:-

1. Incised wound 8cm x 1cm x bone deep on the left parietal temporal region of scalp by sharp ante mortem.
2. Incised wound 5cm x 1cm x bone deep on the scalp of right parietal region by sharp ante mortem.
3. Incised wound 6cm x 1cm x bone deep on scalp of right parietal temporal region by sharp ante mortem
4. Incised wound 7cm x ¾cm x bone deep on the scalp of back region of right parietal region by sharp ante mortem
5. Abrasion 4cm x 3cm on right side forehead by blunt ante mortem.
6. Lacerated wound 1.5 cm x ½cm x bone deep, brain 6cm x 3cm on left chuk by blunt ante mortem.
7. Lacerated wound 1.5cm x ½cm x bone deep on left eye brow by blunt ante mortem
8. Abrasion 2cm x 1.5 cm on left chuck by blunt ante mortem
9. Lacerated wound 4cm x 3cm x bone deep by blunt on right arm antina aspect fractured humorous Rt. coming out from wound ante mortem
10. Lacerated wound 1.5cm x ½cm x skin deep on prdytis lateral aspect of left forearm by blunt ante mortem.
11. Bruise 6cm x 2cm on left side of neck by blunt ante mortem
12. Bruise 7cm x 2cm on right side of chest by blunt ante mortem.

According to Dr. Pooran Azad (Pw.5) the cause of death of was hemorrhage and shock as a result of injury No.2.

5. The prosecution case rests on the testimony of Maya Kaur (Pw.1). Other eye witnesses named in the FIR Arjun Singh s/o Jawahar Singh (Pw.3) Arjun Singh s/o Rana Singh (Pw.4) did not support the

prosecution case and they were declared hostile. Since prosecution case is founded on the sole testimony of informant Maya Kaur (Pw.1), we deem it appropriate to address ourselves on the issue as to in what manner the testimony of single witness can be considered.

7. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for proof or disproof of a fact. Section 134 follows the maxim that evidence is to be weighed and not counted. Law does not insist on plurality of evidence. It is the quality of the witness which is significant in appraisal of evidence. So long as the single eye witness is wholly reliable witness, the Court has no difficulty in basing conviction on his testimony alone.

8. The evidence of the sole eye witness has to be scrutinised with caution and circumspection. Conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not taken by any adverse circumstance appearing on the record against him and the court at the same time is convinced that he is a truthful witness.

9. Bearing these principles in mind, we proceed to scan the testimony of Maya Kaur (Pw.1), who deposed that when she along with her brother Balbir Singh was going to village Barbada, they found just ahead of village Lavan, Amar Singh, Dhanna Singh (appellant herein), Bood Singh and Pyar Singh obstructed their way and started beating her brother. Dhanna Singh was armed with Pharsi whereas others were having lathis. They had a scuffle with her brother and they instigate each other to kill him without paying any heed to her request to spare her brother. Her brother died on the spot. She specifically attributed the injuries on the head of deceased with

Pharsi to appellant. Despite searching cross examination her testimony could not be shattered and her testimony gets corroboration from the medical evidence.

10. The Evidence Act does not purport to lay down any rule as to the weight to be attached to the evidence when admitted, nor is any such rule possible for proper appreciation of evidence is a matter of experience, common sense and knowledge of human affairs. BIRCH J. in R vs. Madhub (21 WR Cr.13) indicated thus:-

> "For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and common sense and shrewdness must be brought to bear upon the facts elicited in every case which a judge of facts in this country discharging the functions of a jury in England, has to weigh and decide."

11. Although efforts have been made by mathematical writers to formulate rules for determining moral certainty it is obvious that no satisfactory system can be devised for weighing evidence and drawing conclusions. In Ram Chandra Vs. Champa Bai (AIR 1965 SC 354) the Apex Court held that in order to judge the credibility of witnesses the court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses but it is open to it to look into the surrounding circumstances as well as the probabilities. On testing the evidence of Maya Kaur in view of surrounding circumstances as well as the probabilities and from the point of view of trustworthiness we find her a reliable witness qua the appellant.

12. Since there is specific allegation against appellant Dhanna that

he inflicted injury on the head of deceased with Pharsa, we find the case of appellant distinguishable with that of the case of co-accused Amar Singh, who stood acquitted.

13. For these reasons, we find no merit in the instant appeal and the same accordingly stands dismissed. Conviction and sentence of appellant Dhanna Singh under section 302 IPC are maintained.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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